

Issue: Income Earned In Illinois/Individual Residency

- (1) Whether the taxpayer failed to notify the Department of a final

federal change affecting the computation of his base income for the 1988 tax year?

(2) Whether the taxpayer's failure to pay all tax liability was due to fraud?

(3) Whether the taxpayer's failure to pay all tax liability was due to reasonable cause?

A hearing was held on April 14, 1995. Upon consideration of all the evidence, it is recommended that the Notice of Deficiency be withdrawn in its entirety.

FINDINGS OF FACT:

1. On October 13, 1994 the Department issued a Notice of Deficiency to the taxpayer which proposed a tax liability of \$28,403, exclusive of statutory interest, and penalties pursuant to 35 ILCS 5/1002(b) and 5/1005 in the amounts of \$21,302 and \$9,366, respectively. (Dept. Ex. No. 1)

2. The taxpayer filed a timely Protest to the Notice on December 6, 1994. (Dept. Ex. No. 2).

3. A hearing was held in this matter on April 14, 1995.

4. At the hearing the taxpayer presented evidence sufficient to rebut the Department's prima facie case.

CONCLUSIONS OF LAW: Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 5/506(a)(b). Here, the Department received notice from the Internal Revenue Service of proposed increases to the taxpayer's adjusted gross income for the 1988 tax year, and subsequently issued a Notice of Deficiency to the taxpayer proposing a tax deficiency in the amount of \$28,403 and the assessment of penalties pursuant to 35 ILCS 5/1002(b) and 5/1005 in the amounts of \$21,302 and \$9,366, respectively.

The Notice of Deficiency is prima facie correct so long as its

proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayer has met his burden in this case.

At the hearing the taxpayer submitted evidence that the dispute regarding the proposed increase to the taxpayer's adjusted gross income for the 1988 tax year is presently in the United States Tax Court and that there is no final federal change for that year. Accordingly, the taxpayer is not subject to additional Illinois income tax for the subject tax year until the issue is resolved at the federal level.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1002(b) and 5/1005 for fraudulent failure to pay tax and for failure to pay the entire tax liability by the due date, respectively. Penalties imposed under the provision of these statutory sections, however, attach to the amount of the deficiency due. If no deficiency is due, there is no penalty. Therefore, imposition of the proposed penalties is moot.

It is my recommendation that this matter be decided in favor of the taxpayer and the Notice of Deficiency be withdrawn in its entirety.

Hollis D. Worm
Administrative Law Judge

April 19, 1995